

PERMANENT MISSION OF THE REPUBLIC OF TURKEY
TO THE UNITED NATIONS OFFICE IN GENEVA

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The Permanent Mission of the Republic of Turkey to the United Nations Office in Geneva and other International Organizations in Switzerland presents its compliments to the Office of the High Commissioner for Human Rights and with reference to the Joint Communication from Special Procedures dated 22 January 2021 (AL TUR 1/2021), has the honour to enclose herewith the observations provided by the Government of the Republic of Turkey.

The Permanent Mission of the Republic of Turkey avails itself of this opportunity to renew to the Office of the High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 18 March 2021



Encl: As stated.

Office of the High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10

**INFORMATION NOTE IN REPLY TO THE JOINT COMMUNICATION FROM THE
SPECIAL PROCEDURES**

(Reference: AL TUR 1/2021)

1. With reference to the letter of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health dated 22 January 2021 regarding Mehmet Sıddık Meşe, the Government would like to submit its observations herein below.

I. OVERVIEW

2. Turkey has adopted a zero tolerance against torture policy since 2003, and introduced a comprehensive set of legislation and other measures in order to prevent, investigate, prosecute and punish all acts of torture and ill treatment.

3. In this context, all allegations of torture and ill-treatment are immediately brought to the attention of the authorities and duly investigated by the judicial and administrative bodies. Public prosecutors carry out investigations regarding torture as a matter of priority. Criminal cases initiated with claims of torture against law enforcement officials are regarded as urgent by the national courts, hence given precedence over other proceedings. All penal institutions can be monitored at any time by national and international monitoring mechanisms and institution personnel have been regularly given training on human rights.

4. The international standards and principles on the matter were adopted, in particular the Conventions of the UN and the Council of Europe. These principles were also guaranteed in the Constitution and became a part of the national legislation.

5. Prohibition of torture and all forms of degrading treatment or punishment is stipulated in Article 17/3 of the Turkish Constitution. According to Article 77 of the Turkish Penal Code (TPC), if the crime of torture or degrading punishment is committed with political, racial, philosophical or religious incentives against a certain section of the society, it is then considered a crime against humanity, in which case the statute of limitations does not apply. Furthermore, according to Article 94 of the TPC, under which the crime of torture was specifically defined, a prison sentence between 3 and 12 years is stipulated for public officials who inflict physical or mental pain upon a person.

Article 94 of the said Law further stipulates that there is no statute of limitations for the crime of torture.

6. According to Article 2 of the Law no. 5275, penal and security measures shall not include cruel, inhumane, degrading and humiliating practices. It is further stipulated that the rules on execution of penal measures shall apply without granting privileges to anyone and without discrimination based on race, language, religion, sect, nationality, color, sex, birth, philosophical belief, national or social origin, political or other opinions or thoughts, economic power or other social status.

7. With the Human Rights Action Plan (HRAP), which was announced on 2 March 2021, comprehensive set of activities are planned in order to continue the diligent application of the policy of zero tolerance for torture and ill-treatment and to ensure effective conduct of investigations. These include activities such as;

- Abolishment of statutory limitation periods in respect of disciplinary infringements, as it was done in respect of criminal offences,
- Creating a database concerning investigations and prosecutions into allegations of torture and ill-treatment,
- Increasing the number of units and physical facilities in hospitals specifically dedicated to judicial/forensic medical examination,
- Standardization of medical reports issued at the time of admission into penal institutions.

8. The HRAP also aims to introduce an improved civil monitoring framework for penal institution system. In this context, it is planned to form an independent Penal Institution Monitoring Commission whereby representatives from Bars, NGOs and universities participate. Civil Monitoring Boards' effectiveness are also planned to be improved in their monitoring capabilities and their periodic reports will be sent to Ombudsman Institution, HREIT and judicial authorities.

II. FACTS

9. On 1 December 2020, Meşe was interviewed about a note he allegedly wrote which was handed to the penal institution administration by his inmates. The note contained inappropriate writings directed towards penal institution personnel. In the interview, Meşe confirmed that he himself wrote the note. Following the interview, disciplinary investigation on the matter was initiated.

10. On 3 December 2020, Meşe lodged a complaint regarding his inmates. In his complaint letter, he stated that he does not have any complaints concerning the penal institution personnel (See Annex for original and unofficial translation of the complaint letter).

11. Meşe was medically examined by a physician appointed to the penal institution by the Provincial Directorate of Health. The physician reported that there were no signs of physical violence found on Meşe's body.

12. On 7 December 2020, contrary to Meşe's previous statement, his lawyer lodged a complaint to the Public Prosecutor's Office alleging that the institution personnel beat and threatened Meşe. An investigation on the matter was immediately initiated.

13. Considering the statements of the personnel concerned and Meşe, the medical report and video recordings, the Public Prosecutor's Office decided for non-prosecution as there are not enough evidence to raise sufficient suspicion for the allegedly committed offense.

14. Meşe's lawyer appealed against the decision. The Criminal Magistrate's Office found that there were no tangible evidence for the alleged matters and rejected the appeal accordingly. Meşe did not further lodge an individual application to the Constitutional Court.

15. Alongside the judicial investigation conducted, an administrative investigation was also initiated on the institution personnel. Considering the evidence present in the file, it was decided that there were no grounds for disciplinary action.

16. On 16 December 2020, pursuant to Article 40 of the Law on Execution of the Penalties and Security Measures no. 5275, Meşe was given 3 months disciplinary ban from cultural and sports activities for his inappropriate behaviour towards institution personnel.

17. On 27 January 2021, Diyarbakır 13th Assize Court decided Meşe's release pending trial.

III. OBSERVATIONS

18. The principle of subsidiarity envisages that the obligation to protect the rights and freedoms enshrined in the human rights documents primarily falls on the national authorities. As such, allegations regarding violation of human rights should primarily concern the domestic legal system.

19. Although he had the means to, Meşe did not lodge an individual application to the Constitutional Court. According to Article 148 of the Constitution and the Law no. 6216, The Constitutional Court can examine individual applications concerning fundamental rights and freedoms enshrined in the Constitution that fall within the scope of the European Convention on Human Rights (ECHR) and its Protocols, after the exhaustion of all administrative and judicial remedies. The European Court of Human Rights (ECtHR), in its established jurisprudence, is of the view that individual application to the Constitutional Court is an effective remedy that should be exhausted.¹

20. In this context, the Government is of the view that directly presenting allegations of human rights violations to the Special Procedures without exhausting domestic remedy mechanisms, constitute an abuse of rights.

21. Meşe was able to actively participate in the investigation process, informed of his legal rights, represented by his lawyers and the investigation regarding his complaint was duly completed. Statements of the institution personnel concerned, Meşe and his inmates were taken in accordance with the law. Video recordings and time and place of the alleged incident was evaluated. The institution personnel were also administratively investigated. Meşe's medical examination was conducted by an independent physician appointed by Provincial Directorate of Health.

22. In accordance with the principles set forth in Paragraph 83 of the Istanbul Protocol and domestic legislation, Meşe's medical examination was performed in conformity of standards of medical practice. As such, the examination is conducted in private and confidentiality between the patient and the physician was established. The medical report includes name of the subject, the exact time and date, location, nature and address of the institution, where the examination is conducted, name and affiliation of the physician.

23. Paragraph 83 of the Istanbul Protocol also states that medical reports, where possible, should include colour photographs of all injuries. However, in the present case, as there were no signs of battery found on Meşe's body, taking photographs was found unnecessary.

¹ Hasan Uzun v. Turkey (10755/13) decision, dated 30 April 2013. The decision of the ECtHR is available at: <http://hudoc.echr.coe.int/eng?i=001-119849>

24. Principles of Istanbul Protocol and UN General Assembly resolution 37/194 of 18 December 1982 were respected in the investigation and medical examination of Meşe. Considering the battery allegations and possible loss of evidence on the body, Meşe was immediately examined by the physician in the institution.

IV. CONCLUSION

25. In light of the explanations above, the Government is of the view that, necessary measures to ensure timely and effective investigation as regard to Meşe's complaint was taken, his access to medical care was facilitated and relevant national and international standards were respected. Considering Meşe is released from the penal institution on 27 January 2021 and did not exhaust domestic remedies, the Government is of the opinion that ill-treatment allegations present in the communication letter should be dismissed.

Annex: Meşe's complaint letter dated 3 December 2020 (In original and unofficial translation)